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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM SETZLER,
Plaintiff,
v.
CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation and
DOES ONE through TEN, inclusive
Defendants.

} Case No. 07-CV-05792-SI

} **DEFENDANT CITY AND COUNTY OF
SAN FRANCISCO'S ANSWER TO
PLAINTIFF'S SECONDED AMENDED
COMPLAINT FOR DAMAGES**

Defendant, CITY AND COUNTY OF SAN FRANCISCO, ("Defendant") answers and responds to Plaintiff William Setzler's ("Plaintiff") Second Amended Complaint ("Complaint") as follows:

1. In responding to the allegations in Paragraph Number 1, Defendant responds as follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis DENIES the allegations in Paragraph Number 1.

2. In responding to the allegations in Paragraph Number 2, Defendant responds as follows: Defendant ADMITS the allegations in Paragraph Number 2.

3. In responding to the allegations in Paragraph Number 3, Defendant responds as follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis

1 DENIES the allegations in Paragraph Number 3.

2 4. In responding to the allegations in Paragraph Number 4, Defendant responds as
3 follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis
4 DENIES the allegations in Paragraph Number 4.

5 5. In responding to the allegations in Paragraph Number 6, Defendant responds as
6 follows: Defendant ADMITS that it is present and operating within the jurisdictional limits of
7 the Northern District of California. Defendant lacks sufficient information or belief to admit or
8 deny, and on that basis DENIES the remainder of the allegations in Paragraph Number 6.

9 6. In responding to the allegations in Paragraph Number 7, Defendant responds as
10 follows: Defendant ADMITS that this action contains a claim pursuant to 42 U.S.C. Section
11 1983. Defendant lacks sufficient information or belief to admit or deny, and on that basis
12 DENIES the remainder of the allegations in Paragraph Number 7.

13 7. In responding to the allegations in Paragraph Number 8, Defendant responds as
14 follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis
15 DENIES the allegations in Paragraph Number 8.

16 8. In responding to the allegations in Paragraph Number 9, Defendant responds as
17 follows: Defendant ADMITS that Plaintiff is required to comply with claims statutes and/or
18 exhaust administrative remedies before instituting certain types of litigation against Defendant.
19 Defendant lacks sufficient information or belief to admit or deny, and on that basis DENIES the
20 remainder of the allegations in Paragraph Number 9.

21 9. In responding to the allegations in Paragraph Number 10, Defendant responds as
22 follows: Defendant ADMITS that an employment relationship existed between Plaintiff and
23 Defendant, and that such an employment relationship existed within the Northern District of
24 California. Defendant lacks sufficient information or belief to admit or deny, and on that basis
25 DENIES the remainder of the allegations in Paragraph Number 10.

26 10. In responding to the allegations in Paragraph Number 11, Defendant responds as
27 follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment
28 with Defendant on November 1, 2006. Defendant DENIES the remaining allegations in
Paragraph Number 11.

11. In responding to the allegations in Paragraph Number 12, Defendant responds as follows: Defendant ADMITS the allegations in Paragraph Number 12.

12. In responding to the allegations in Paragraph Number 13, Defendant responds as follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis DENIES the allegations in Paragraph Number 13.

13. In responding to the allegations in Paragraph Number 14, Defendant responds as follows: Defendant lacks sufficient information or belief to admit or deny, and on that basis DENIES the allegations in Paragraph Number 14.

14. In responding to the allegations in Paragraph Number 15, Defendant responds as follows: Defendant ADMITS that it terminated Plaintiff's employment on November 1, 2006, and that Plaintiff had failed to complete his probation when he was terminated. Defendant DENIES the remaining allegations in Paragraph Number 15.

FIRST CAUSE OF ACTION

15. In responding to the allegations in Paragraph Number 17, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 17.

16. In responding to the allegations in Paragraph Number 18, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 18.

17. In responding to the allegations in Paragraph Number 19, Defendant responds as follows: Defendant ADMITS that the Sheriff is the ultimate decision maker with regard to employee discipline in the Sheriff's Department. Defendant DENIES the remaining allegations in Paragraph Number 19.

18. In responding to the allegations in Paragraph Number 20, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 20.

19. In responding to the allegations in Paragraph Number 21, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 21.

20. In responding to the allegations in Paragraph Number 22, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 22.

21. In responding to the allegations in Paragraph Number 23, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 23.

SECOND CAUSE OF ACTION

22. In responding to the allegations in Paragraph Number 27, Defendant responds as follows: Defendant ADMITS that Plaintiff attached a complaint with the Department of Fair Employment and Housing as Exhibit A to the Complaint and attached a Right to Sue Letter from the Department of Fair Employment and Housing as Exhibit B to the Complaint. Defendant lacks sufficient information or belief to admit or deny, and on that basis DENIES the allegations in Paragraph Number 27.

23. In responding to the allegations in Paragraph Number 28, Defendant responds as follows: Defendant ADMITS that Government Code section 12940 (h) precludes employers from engaging in unlawful retaliation. Defendant DENIES the remaining allegations in Paragraph Number 28.

24. In responding to the allegations in Paragraph Number 29, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 29.

THIRD CAUSE OF ACTION

25. In responding to the allegations in Paragraph Number 32, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 32.

26. In responding to the allegations in Paragraph Number 33, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 33.

27. In responding to the allegations in Paragraph Number 34, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 34.

28. In responding to the allegations in Paragraph Number 35, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 35.

29. In responding to the allegations in Paragraph Number 36, Defendant responds as follows: Defendant ADMITS that Plaintiff was terminated from his probationary employment with Defendant. Defendant DENIES the remaining allegations in Paragraph Number 36.

30. In responding to the allegations in Paragraph Number 37, Defendant responds as follows: Defendant DENIES the allegations in Paragraph Number 37.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Complaint, Defendant alleges the following:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant for Violation of Plaintiff's Federal Civil Rights, Freedom of Speech, under 42 U.S.C. Section 1983, et seq.

SECOND AFFIRMATIVE DEFENSE

Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant for Retaliation.

THIRD AFFIRMATIVE DEFENSE

Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant for Violation of Wrongful Termination in Violation of Public Policy.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are frivolous, unreasonable and groundless and, accordingly, Defendants should recover all costs and attorneys' fees incurred herein

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by his failure to exhaust administrative and/or contractual remedies.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

EIGHT AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action alleging a violation of 42 U.S.C. § 1983 is barred on the ground that Defendant does not have any municipal policies, customs, or practices that have deprived Plaintiff of any constitutional rights.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's cause of action alleging a violation of 42 U.S.C. § 1983 is barred on the ground that neither a municipality nor its officers, supervisors, or policymakers can be held liable under 42 U.S.C. § 1983 under a respondeat superior theory. *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978).

ELEVENTH AFFIRMATIVE DEFENSE

If Defendant's current or former employees committed the acts alleged in the Complaint, although such is not admitted hereby or herein, such acts were committed outside the scope of employment and not by agents of Defendant, and, thus, Defendant is not liable for such acts.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because they are moot.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

At all times mentioned in the Complaint, Defendant acted in conformity with applicable law, regulation, and policy.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and consent.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff had a duty, but failed, to mitigate any damages to which he may be entitled.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, to the extent they seek damages for physical, mental and/or emotional distress, are barred by California Labor Code sections 3600 *et seq.*, which provides

that workers' compensation is Plaintiff's exclusive remedy

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to an award of attorneys' fees.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are frivolous, unreasonable and/or without foundation, and accordingly, Defendant should recover all costs and attorneys' fees incurred herein from Plaintiff. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978).

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by failure to timely file a government tort claim pursuant to California Government Code Section 910 et.seq.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Each and every cause of action is barred on the ground that all acts of Defendant that affected the terms and/or conditions of the Plaintiff's employment were done in good faith and motivated by legitimate, job-related, nondiscriminatory, and non-retaliatory reasons and/or as a result of business necessity.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Each and every cause of action is barred on the ground that all acts of Defendant that affected the terms and/or conditions of the Plaintiff's employment were privileged and done with good cause.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's causes of action, and each of them, are barred by Plaintiff's failure to exhaust his administrative remedies, including without limitation, his failure to comply with the statutory requirements and/or the claim-filing procedures under the FEHA and with the Labor Commissioner.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and each of them, are barred by the privileges and immunities applicable to public employees and agencies, including without limitation California Government Code §§ 815, 815.2, 815.6, 818, 818.2, 820.2, 820.4, 820.6, 820.8, 821, 821.6, and 822.2.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

If Plaintiff was entitled to recover for any loss suffered or sustained at the times alleged, although such is not admitted hereby or herein, then the total amount of damage to which Plaintiff would otherwise be entitled shall be limited in whole or in part by the doctrine of after-acquired evidence.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

7 Plaintiff's alleged injuries, losses, or damages, if any, were proximately caused by a
8 superseding and intervening cause.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

10 Plaintiff's Complaint, and each cause of action therein, is vague and conclusory such
11 that Defendant cannot fully anticipate all affirmative defenses that may be applicable.
12 Accordingly, Defendant hereby reserves the right to assert additional affirmative defenses, if
13 and to the extent that such affirmative defenses are applicable.

PRAAYER FOR RELIEF

WHEREFORE, Defendant, CITY AND COUNTY OF SAN FRANCISCO prays for judgment as follows:

- 17 1. That all relief requested in the Complaint be denied with prejudice;
18 2. That Plaintiff take nothing by its action;
19 3. That judgment be entered in the Defendant's favor.
20 4. That the Defendant be awarded its costs of suit, including reasonable attorneys' fees and
21 any and all costs;
22 5. Such further and other relief as the Court deems just and proper.

DATED: July 10, 2008

MYEWS, NAVF, RIBACK, SILVER & WILSON

By:

Jesse J. Lad
Attorneys for Defendant

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